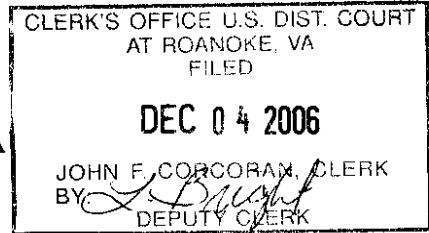


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION



VA TIMBERLINE, LLC,	)	
Plaintiff,	)	
v.	)	Civil Action No. 4:06-cv-00026
	)	
APPALACHIAN POWER COMPANY	)	<u>ORDER</u>
and	)	
FRANKLIN REAL ESTATE	)	
COMPANY,	)	
	)	By: Hon. James C. Turk
DEFENDANTS.	)	Senior United States District Court Judge

**ORDER**

The Defendants filed a demurrer before the above-captioned matter was removed to this court. Demurrers have been abolished by rule 7(c) of the Federal Rules of Civil Procedure; therefore the court construes the Defendants' demurrer as a motion to dismiss pursuant to Rule 12(b)(6).

Because the court cannot conclude that the Plaintiff's pleading fails to state a claim upon which relief can be granted, the Defendants' motion to dismiss is hereby **DENIED**. The Defendant shall have 21 days to file a responsive pleading.

The Clerk of court is directed to send certified copies of this Order to all parties of record.

ENTER: This 4<sup>th</sup> day of December, 2006.

*[Signature]*  
\_\_\_\_\_  
SENIOR UNITED STATES DISTRICT JUDGE